



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by Thomson West.

TITLE 2. COMMISSION ON STATE MANDATES

TITLE 2. ADMINISTRATION DIVISION 2. FINANCIAL OPERATIONS CHAPTER 2.5. COMMISSION ON STATE MANDATES

NOTICE OF PROPOSED RULEMAKING

The Commission on State Mandates (Commission) proposes to adopt the regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Commission has not scheduled a public hearing on this proposed action. However, the Commission will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at **5:00 p.m. on May 31, 2007**. The Commission will consider only comments received at the Commission offices by that time. Submit comments to:

Cathy Cruz Jefferson, Senior Program Analyst
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Government Code section 17527, subdivision (g), authorizes the Commission to adopt the proposed regu-

lations. The purpose of this rulemaking is to define reasonable reimbursement methodology terms and clarify conditions expressed in Government Code section 17518.5 so that the Commission can successfully adopt reasonable reimbursement methodologies for parameters and guidelines.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commission is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6). The Commission proposes to amend section 1183.13 under article 3 of the California Code of Regulations, title 2, division 2, chapter 2.5.

Section 1183.13 establishes the procedures for submitting a reasonable reimbursement methodology. It defines the parties that may submit a proposed methodology, requires the methodology to include any documentation or assumptions used to develop the methodology, and provides all parties with the opportunity to comment on the proposed methodology and to rebut any comments. The Commission proposes to add definitions for specific terms in Government Code section 17518.5, such as “costs to implement the program in a cost-efficient manner” and “eligible local agency and school district claimants,” and to clarify how reasonable reimbursement methodology conditions expressed in Government Code section 17518.5 can be met.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commission has made the following initial determinations:

Mandate on local agencies and school district:	None
Cost or savings to any state agency:	None
Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:	None
Other non-discretionary cost or savings imposed on local agencies:	None
Cost or savings in federal funding to the state:	None
Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:	None
Significant effect on housing costs:	None
Cost impacts on a representative private person or business:	The Commission is not aware of any cost im-

pacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Small Business Determination: Because the Commission has no jurisdiction over small businesses, the proposed regulatory action will have no impact on small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Cathy Cruz Jefferson, Senior Program Analyst
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-3562

The backup contact person for these inquiries is:

Nancy Patton, Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-3562

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if

any, or other information upon which the rulemaking is based to Ms. Cathy Cruz Jefferson at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Commission order to initiate rulemaking proceedings. Copies may be obtained by contacting Ms. Cathy Cruz Jefferson at the address or phone number listed above. All persons on the Commission's interested persons mailing list will automatically be sent a copy of the rulemaking file.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, and holding a public hearing, if necessary, the Commission may adopt the proposed regulations substantially as described in this notice. If the Commission makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. Cathy Cruz Jefferson at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Cathy Cruz Jefferson at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at www.csm.ca.gov.

**TITLE 5. STATE SUPERINTENDENT
OF PUBLIC INSTRUCTION**

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

**NOTICE OF PROPOSED RULEMAKING
AMENDMENT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 5, REGARDING THE
CALIFORNIA STATE SPECIAL SCHOOLS
FOR THE DEAF OR BLIND, OR STATE
DIAGNOSTIC CENTERS**

[Notice published April 13, 2007]

NOTICE IS HEREBY GIVEN that the State Superintendent of Public Instruction (SSPI) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

California Department of Education staff, on behalf of the SSPI, will hold a public hearing beginning at **11:00 a.m. on June 11, 2007**, at the Elementary Activity Center at the California School for the Deaf, Fremont, 39350 Gallaudet Drive, Fremont, CA 94538. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SSPI requests that any person desiring to present statements or arguments orally notify the Regulations Coordinator of such intent. The SSPI requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Debra Strain, Regulations Coordinator
LEGAL DIVISION
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to regcomments@cde.ca.gov. Comments must be received by the Regulations Coordinator prior to **5:00 p.m. on June 11, 2007**.

Following the public hearing and considering all timely and relevant comments received, the SSPI may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

AUTHORITY AND REFERENCE

Authority: Sections 33119, 59003, 59103, 59113 and 59203, Education Code.

References: Sections 33119, 59003, 59103, 59113 and 59203, Education Code.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

The SSPI proposes to amend, add or delete regulations on Employees of the California State Special Schools for the Deaf, Blind, or State Diagnostic Centers. The SSPI proposes to revise sections 17600, 17601, 17602, 17603, 17604, 17605, 17606, 17607, 17608, and 17609, and add section 17604.1 of chapter 18, subchapter 1, article 1; revise sections 17625, 17626, 17627, 17628, and 17629, and add section 17624 of chapter 18, subchapter 1, article 2; revise sections 17630, 17631, and 17632, add section 17630.1, and delete sections 17633 and 17634 of chapter 18, subchapter 1, article 3; revise sections 17640, 17641, and 17642, and add sections 17638 and 17639 of chapter 18, subchapter 1, article 4; and revise sections 17646 and 17648, add section 17643, 17644, and 17650, and delete sections 17645, 17647, and 17649 of chapter 18, subchapter 1, article 5.

The teaching staff members at the California Schools for the Deaf, the California School for the Blind, and the State Diagnostic Centers are exempt from state civil service rules and regulations under the California State Constitution, article VII, section 4(i). In the absence of civil service rules and regulations, the SSPI is authorized under Education Code sections 59003, 59103, 59203, and 33119 to establish rules governing the employment conditions of such employees. Articles 1 through 5 of Title 5, Chapter 18 currently are those rules. These rules address working conditions that are

not otherwise covered under a bargaining unit agreement established under Section 3512 of the Government Code (i.e., the State Employer–Employee Relations Act (SEERA)).

The Schools for the Deaf, the School for the Blind, and the State Diagnostic Centers are special schools and centers operated under the auspices of the State Superintendent of Public Instruction and administered by the California Department of Education. The three schools (two Schools for the Deaf and one School for the Blind) provide educational and residential services for K–12 students in Fremont and Riverside California, and the three Diagnostic Centers provide assistance to local educational agencies throughout the state in diagnosing the educational needs of K–12 students. All six facilities employ teaching staff, e.g., teachers, specialists, supervising teachers, and administrators, to provide educational services to students and local educational agencies.

The proposed regulation changes apply only to those employees who are exempt (from civil service) teaching staff at the subject facilities. As currently written the regulations have not been modified for over four decades. Modifications are proposed to reflect the impact of the SEERA and other operational needs that are not currently addressed in the regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The SSPI has made the following initial determinations:

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None

Other non–discretionary costs or savings imposed on local educational agencies: None

Costs or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The SSPI is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within Califor-

nia; or 3) affect the expansion of businesses currently doing business within California.

Effect on housing costs: None

Effect on small businesses: The proposed amendments to the regulations do not affect small businesses because the regulations apply only to the employment operations of public schools directly administered by the California Department of Education, and not to small business practices.

CONSIDERATION OF ALTERNATIVES

The SSPI must determine that no reasonable alternative he considered or that has otherwise been identified and brought to his attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the content of this regulation should be directed to:

Rebecca Newland, Manager
California Department of Education
1430 N Street, Room 1801
Sacramento, CA 95814
E-mail: bnewland@cde.ca.gov

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Connie Diaz, Regulations Analyst, at 916–319–0860.

INITIAL STATEMENT OF REASONS AND INFORMATION

The SSPI has prepared an Initial Statement of Reasons for the proposed regulation and has available all the information upon which the proposal is based.

TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulation, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE’s Web site at <http://www.cde.ca.gov/re/lr/rr/>.

AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS
AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the Regulations Coordinator.

REASONABLE ACCOMMODATION FOR
ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Rebecca Newland, Manager, 1430 N Street, Room 1801, Sacramento, CA, 95814; e-mail address: bnewland@cde.ca.gov. It is recommended that assistance be requested at least two weeks prior to the hearing.

NOTE: Please note that sign language (ASL) interpreters will be provided at the hearing.

**TITLE 10. DEPARTMENT OF
INSURANCE**

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

File No. REG-2007-00015

Notice Date: March 30, 2007

Proposed Revisions to the Insurance Commissioner's Regulations pertaining to the Classification of Risks; Recording and Reporting of Data; Statistical Reporting and Experience Rating; and Approval of Advisory Pure Premium Rates to be effective July 1, 2007.

SUBJECT OF HEARING

NOTICE IS HEREBY GIVEN that the Insurance Commissioner will hold a public hearing to consider (1) the approval of advisory pure premium rates developed by the designated rating organization, (2) amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, and (3) amendments to the California Workers' Compensation Experience

Rating Plan—1995. The hearing will be held in response to a filing, submitted on March 30, 2007, by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB").

HEARING DATE AND LOCATION

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time and place:

May 3, 2007 — 10:00 A.M.
California Department of Insurance
22nd Floor Hearing Room
45 Fremont Street
San Francisco, California

REASONABLE ACCOMMODATION

Pursuant to the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Unruh Civil Rights Act, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on the proposed regulations, may request assistance by contacting Christopher Citko, Senior Staff Counsel, 300 Capitol Mall, 17th Floor, Sacramento, CA, 95814; telephone, 916-492-3187; fax, 916-324-1883. It is recommended that assistance be requested at least one week prior to the hearing.

ACCESS TO HEARING ROOMS

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make special arrangements, if necessary.

**PRESENTATION OF ORAL AND/OR
WRITTEN COMMENTS**

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance
Attn: Christopher A. Citko
Senior Staff Counsel
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3187

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the Insurance Commissioner's deliberations.

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be addressed to the following backup contact person:

Harry Levine, Senior Staff Counsel
California Department of Insurance
45 Fremont Street
San Francisco, CA 94105
Telephone: (415) 538-4109

DEADLINE FOR WRITTEN COMMENTS

All written material, unless submitted at the hearing, must be received by the Insurance Commissioner at the address listed above no later than 5:00 PM on May 10, 2007.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: **citkoc@insurance.ca.gov**. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Christopher A. Citko and sent to the following facsimile number: **(916) 324-1883**. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail/facsimile are subject to the deadline above for written comments and must be received no later than 5:00 p.m. on May 10, 2007.**

AUTHORITY REFERENCE

Uniform Plans and Regulations

The workers' compensation classification of risks and statistical reporting rules are set forth in Title 10, California Code of Regulations, Section 2318.6. The workers' compensation experience rating regulations are set forth in Title 10, California Code of Regulations, Section 2353.1. The regulations were promulgated by the Insurance Commissioner pursuant to the authority granted by Insurance Code Section 11734.

Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium

rates for submission to the Insurance Commissioner for issuance or approval. The Insurance Code provisions regarding State rate supervision operative January 1, 1995 do not authorize the Insurance Commissioner to require insurers to use the pure premium rates submitted by the designated rating organization and issued or approved by the Insurance Commissioner. Accordingly, the pure premium rates issued or approved by the Insurance Commissioner are advisory only.

Advisory Rating Plans

Pursuant to Insurance Code Sections 11750.3(a) and 11750.3(c), a licensed rating organization may promulgate advisory plans in connection with pure premium rates and the administration of classification and rating systems and present them to the Insurance Commissioner for review.

INFORMATIVE DIGEST

Pursuant to Insurance Code Sections 11734 and 11751.5, the Insurance Commissioner has designated the WCIRB as his rating organization and statistical agent. As the designated rating organization and statistical agent, the WCIRB has developed and submitted for the Insurance Commissioner's approval pure premium rates and revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 and California Workers' Compensation Experience Rating Plan—1995. The pure premium rates will be advisory only; however, adherence to the regulations contained in the California Workers' Compensation Uniform Statistical Reporting Plan—1995, and the California Workers' Compensation Experience Rating Plan—1995 is mandatory.

The pure premium rates recommended by the WCIRB to be effective July 1, 2007, as well as amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, and the California Workers' Compensation Experience Rating Plan—1995, are detailed in the WCIRB's filing and summarized below.

APPROVE PURE PREMIUM RATES

Pursuant to California Insurance Code Section 11750.3, the WCIRB has proposed advisory pure premium rates for approval by the Insurance Commissioner to be effective July 1, 2007 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after July 1, 2007. The proposed advisory pure premium rates are 11.3% less than the January 1, 2007 advisory pure premium rates approved by the Insurance Commissioner.

The proposed pure premium rate decrease of 11.3% is based on (1) insurer losses incurred during 2006 and

prior accident years valued as of December 31, 2006; (2) insurer loss adjustment expenses for 2005 and prior years; and (3) except as noted, the same methodologies underlying the approved pure premium rates effective January 1, 2007. These factors are discussed in Part A of this filing.

AMEND THE CALIFORNIA WORKERS' COMPENSATION UNIFORM STATISTICAL REPORTING PLAN—1995

The WCIRB recommends that the following revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 become effective July 1, 2007 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after July 1, 2007:

- Amend to address the audit requirements related to 2006 legislation (Assembly Bill No. 881), which requires each policy written for a C-39 licensed contractor to be audited.
- Amend to clarify the example pertaining to final premium to indicate that any surcharges for policyholder audits charged by the insurer pursuant to provisions in 2006 legislation (Assembly Bill No. 881) are to be included in reported final premium amounts.
- Amend to clarify the applicability of the change in the physical audit threshold from \$16,000 to \$10,000 that was adopted effective January 1, 2007.

AMEND CALIFORNIA WORKERS' COMPENSATION EXPERIENCE RATING PLAN—1995

The WCIRB recommends the following revisions to the California Workers' Compensation Experience Rating Plan—1995 to become effective July 1, 2007 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after July 1, 2007.

- Amend the Experience Rating Eligibility \$16,000 to \$14,192 to reflect the proposed July 1, 2007 pure premium rate change.
- Amend the expected loss rates effective July 1, 2007 to reflect the most current loss experience available.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

COSTS OR SAVINGS RESULTING FROM THE REGULATIONS

The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by insurance companies. To the extent they are adopted, they may result in lower costs.

FISCAL IMPACT ESTIMATES AND MANDATES AND REIMBURSEMENTS TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Insurance Commissioner has determined that there will be no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, and there will not be any new programs mandated on any local agency or school district as a result of the proposed regulations.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has determined that the proposed regulations will not have a significant effect on housing costs.

SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES/SMALL BUSINESSES

The Insurance Commissioner has made an initial determination that the adoption of the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Insurance Commissioner has determined there are no alternatives to these proposed regulations to lessen this impact.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Insurance Commissioner is required to assess any impact the proposed regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of exiting businesses, and the expansion of businesses currently operating in the state. The Insurance Commissioner estimates that the proposed regulations will not have any impact or significant effect in these areas.

IMPACT ON SMALL BUSINESSES

The Insurance Commissioner has determined that the proposed regulations will not have a significant effect on small businesses.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. At this time, the Insurance Commissioner expects that the proposed regulations will not have a significant effect on private persons or entities.

FEDERAL FUNDING TO THE STATE

The matters proposed herein will not affect any federal funding.

NON-DISCRETIONARY COSTS OR SAVINGS

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to State agencies, except for the State Compensation Insurance Fund.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the Insurance Commissioner or that has otherwise been identified and brought to the attention of the Insurance Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS AVAILABLE

The Insurance Commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing and the Initial

Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above). The filing may also be accessed on the WCIRB's website at www.wcirbonline.org/filings.

ACCESS TO RULE MAKING FILE, CONTACT

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to this filing, the statement of reasons thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available for inspection at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 AM and 4:30 PM, Monday through Friday.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find, on the right-side column, the pull down menu under "For Insurers" under the heading "Quick Links." Select the "Legal Information" link. On the "Legal Information" page, click on the "Proposed Regulations" link. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for the name.

- To search, enter "REG-2007-00015" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of a code section that the regulations implement (in this case, "11750") or search by keyword ("workers' compensation", for example). Then, click on the "Submit" button to display links to the various filing documents.
- To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "July 1, 2007 Workers' Compensation Pure Premium Rate Hearing" link, and click it. Links to the documents associated with these regulations will then be displayed.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest that contains the general substance of the proposed

regulations, automatically will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings, and California Government Code mailing lists.

ADOPTION OF REGULATIONS

Following the hearing, the Insurance Commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the Insurance Commissioner's action will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the Commissioner's action.

TITLE 16. BOARD OF PODIATRIC MEDICINE

NOTICE IS HEREBY GIVEN that the Board of Podiatric Medicine (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the State Capitol Building, Room 113, Sacramento, California, 95814, at 9:00 a.m., on June 1, 2007. Written comments must be received by the Board at its office not later than 5:00 p.m. on May 30, 2007, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 2470 of the Business and Professions Code; and to implement, interpret or make specific Sections 2480 and 2488 of the Business and Professions Code, the Board is considering changes to Division 13.9 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code Section 2470 authorizes the board to adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act, regulations necessary to enable the board to carry into effect the provisions of law relating to the practice of podiatric medicine.

Amend Section 1399.696 Citations and Fines.

This amendment would increase the amount of the administrative fine in specified circumstances from a maximum of \$2,500 to \$5,000. This would amend section 1399.696 to conform to Section 125.9 as amended by legislation in 2003, chapter 788 (SB362.)

Amend Section 1399.697 Contest of Citations.

Change section 1399.697(b), which currently references subsection (e) of section 1399.696, to read subsection (f) of section 1399.696.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

Nondiscretionary Costs/Savings to Local Agencies:

None.

Local Mandate:

None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement:

None.

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Board of Podiatric Medicine has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board of Podiatric Medicine is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs:

None.

EFFECT ON SMALL BUSINESS

The Board of Podiatric Medicine has determined that the proposed regulations would not affect small businesses because they relate to enforcement activities against licensees who have violated the law.

The express terms of the proposed action written in plain English are available from the agency contact person named in this notice.

CONSIDERATION OF ALTERNATIVES

The Board of Podiatric Medicine must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Podiatric Medicine has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Podiatric Medicine at 1420 Howe Avenue, Suite 8, Sacramento, California 95825-3229.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below **[or by accessing the website listed below]**.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Kathleen Cook
Address: 1420 Howe Avenue, Suite 8
Sacramento, CA 95825-3229
Telephone No.: 916-263-0315
Fax No.: 916-263-2651
E-Mail Address: Kathleen_Cook@dca.ca.gov

The backup contact person is:

Name: Jim Rathlesberger
Address: 1420 Howe Avenue, Suite 8
Sacramento, CA 95825-3229
Telephone No.: 916-263-2650
Fax No.: 916-263-2651
E-Mail Address: Jim_Rathlesberger@dca.ca.gov

Website Access: Material regarding this proposal can be found at www.bpm.ca.gov.

TITLE 16. BOARD OF PODIATRIC MEDICINE

NOTICE IS HEREBY GIVEN that the Board Podiatric Medicine (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the State Capitol Building, Room 113, Sacramento, California, 95814, at 9:00 a.m., on June 1, 2007. Written comments must be received by the Board at its office not later than 5:00 p.m. on May 30, 2007, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2470 of the Business and Professions Code; and to implement, interpret or make specific Sections 2480 and 2488 of the Business and Professions Code, the Board is considering changes to Division 13.9 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Amend Section 1399.678 — Waiver of Requirement.

Business and Professions Code Sections 2470 authorizes the board to adopt, amend or repeal, in accordance with the provisions of the Administrative Procedure Act, regulations necessary to enable the board to carry into effect the provisions of law relating to the practice of podiatric medicine.

This amendment would remove the language that permits retired licensees restricted practice and conform to Business and Professions section 2439(b), (SB1077, chapter 607, Statutes of 2003), which says that a doctor of podiatric medicine may not practice with a retired license.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

Nondiscretionary Costs/Savings to Local Agencies:

None.

Local Mandate:

None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement:

None.

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Board of Podiatric Medicine has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board of Podiatric Medicine is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs:

None.

EFFECT ON SMALL BUSINESS

The Board of Podiatric Medicine has determined that the proposed regulations would not affect small businesses. This amendment eliminates the language in the regulation that permits retired licensees restricted practice and conforms to Business and Professions section 2439(b), amended in 2003, which **does not** allow retired licensees to practice.

CONSIDERATION OF ALTERNATIVES

The Board of Podiatric Medicine must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS
AND INFORMATION

The Board of Podiatric Medicine has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Podiatric Medicine at 1420 Howe Avenue, Suite 8, Sacramento, California 95825-3229.

AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS AND
RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below **[or by accessing the website listed below].**

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Kathleen Cook
 Address: 1420 Howe Avenue, Suite 8
 Sacramento, CA 95825-3229
 Telephone No.: 916-263-0315
 Fax No.: 916-263-2651
 E-Mail Address: Kathleen_Cook@dca.ca.gov

The backup contact person is:

Name: Jim Rathlesberger
 Address: 1420 Howe Avenue, Suite 8
 Sacramento, CA 95825-3229
 Telephone No.: 916-263-2650
 Fax No.: 916-263-2651
 E-Mail Address: Jim_Rathlesberger@dca.ca.gov

Website Access: Material regarding this proposal can be found at www.bpm.ca.gov.

TITLE 16. PHYSICIAN ASSISTANT COMMITTEE

NOTICE IS HEREBY GIVEN that the Physician Assistant Committee is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at Hilton Los Angeles Airport, 5711 West Century Boulevard, Carmel Room, Los Angeles, California, 90045 at 11:00 a.m., on 31 May 2007. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Physician Assistant Committee at its office not later than 5:00 p.m. on 28 May 2007 or must be received by the Physician Assistant Committee at the hearing. The Physician Assistant Committee, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 3510 of the Business and Professions Code and to implement, interpret or make specific Sections 11425.50 and 11519 of the Government Code, and

Sections 3527, 3528, 3529, 3530, and 3531 of the Business and Professions Code, the Physician Assistant Committee is considering changes to Division 13.8 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend section 1399.523.

The existing regulation incorporates by reference the committee's disciplinary guidelines entitled, "Manual of Disciplinary Guidelines and Model Disciplinary Orders 2nd Edition, 2002." The guidelines are used by committee staff, Deputy Attorneys Generals, Administrative Law Judges, licensees, and attorneys to assist in determining penalties in the disciplinary process against physician assistant licensees. On 15 February 2007 the committee approved revisions to the disciplinary guidelines. This proposal would incorporate by reference the revised document entitled, "Manual of Disciplinary Guidelines and Model Disciplinary Orders 3rd Edition, 2007.

Since adoption of the prior version, the committee has considered revisions to the guidelines incorporating additional violations and modifications to penalties to be consistent and appropriate to the practice of physician assistants. The changes also attempt to ensure a violation will not be repeated and provide the committee tools for effectively monitoring probation compliance.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Some cost savings due to cost recovery and probation monitoring payments from licensees who have been disciplined.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because it only effects individual licensees who are being disciplined by the committee.

AND

The following studies/relevant data were relied upon in making the above determination: None.

Impact on Jobs/New Businesses:

The Physician Assistant Committee has determined that this regulatory proposal may expand the following types of businesses: businesses offering Medical Records Keeping Courses and Professional Boundaries Programs that may be required as terms for physician assistant probation licensees.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Physician Assistant Committee are cost associated with a disciplinary order. Costs only affect individual licensees who are being disciplined.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Physician Assistant Committee has determined that the proposed regulations would not affect small businesses because the regulations are applicable only to physician assistants who are disciplined by the committee and placed on probation.

CONSIDERATION OF ALTERNATIVES

The Physician Assistant Committee must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Physician Assistant Committee has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Physician Assistant Committee at 1424 Howe Avenue, Suite 35, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Glenn Mitchell
Address: 1424 Howe Avenue, Suite 35
Sacramento, CA 95825

Telephone No.: (916) 561-8783
Fax No.: (916) 263-2671
E-mail Address: gmittell@mbc.ca.gov

The backup contact person is:

Name: Elberta Portman
Address: 1424 Howe Avenue, Suite 35
Sacramento, CA 95825
Telephone No.: (916) 561-8782
Fax No.: (916) 263-2671
E-mail Address: eportman@mbc.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to:

Name: Dianne Tincher
Address: 1424 Howe Avenue, Suite 35
Sacramento, CA 95825
Telephone No.: (916) 561-8786
Fax No.: (916) 263-2671
E-mail Address: dtincher@mbc.ca.gov

Website Access: Materials regarding this proposal can be found at: www.physicianassistant.ca.gov.

TITLE 17. DEPARTMENT OF HEALTH SERVICES

ACTION: Notice of Proposed Rulemaking
Title 17, California Code of Regulations

SUBJECT: Requirements for Lead-based Paint Activities, **DPH-07-003**

PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Department of Health Services (Department) is required to establish and maintain an authorized state program for lead activities that meets U.S. Environmental Protection Agency (EPA) standards (Health and Safety Code section 105250). The required elements of an authorized state program are established in federal regulations (EPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule. 61 Federal Register 45777, August 29, 1996) and include (1) accreditation of training programs, (2) certification of individuals, (3) implementation of work practice standards for lead activities, including abatement and lead hazard evaluation, and (4) enforcement and administration.

To comply with this legislative mandate, the Department adopted regulations governing lead activities (Title 17, California Code of Regulations, section 35001 *et seq.* referenced herein as "Title 17") in 1994 and established a Training and Certification Program for Lead Activities in 1998. The EPA subsequently recognized the Department as an authorized state program in September 1999. Since that time, both EPA and the U.S. Department of Housing and Urban Development (HUD) have adopted new regulations governing lead activities (HUD. Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule. 64 Federal Register 50140, September 15, 1999) and (EPA. Lead; Identification of Dangerous Levels of Lead, Final Rule. 66 Federal Register 1205, January 5, 2001). Several components of these new federal requirements are more

stringent than California's existing standards and the Department is proposing to amend Title 17 to reflect new federal standards and ensure continued status as an authorized state program.

Regulation changes in sections 35004, 35006, 35007, 35016, 35022, 35031, 35032, 35033, 35035, 35038, 35043, 35045, 35046, and 35050 would amend current definitions and adopt new definitions that state the meaning of the terms used by the Department to specify its requirements in regulation to ensure that the regulations are clear.

Section 35054 would amend current regulation to reflect the proposed elimination of the project designer discipline and adoption of the sampling technician discipline related to final examination requirements provided by accredited training providers in training sampling technicians.

Section 35055 would amend current regulation to reflect the adoption of the sampling technician discipline related to core instructional requirements, making the sampling technician course exempted from the core instructional requirements.

Section 35061 would amend current regulation to reflect the proposed elimination of the project designer course and adoption of the sampling technician course.

Section 35072 would amend current regulation to reflect the proposed elimination of the project designer discipline and adoption of the sampling technician discipline related to general continuing education requirements.

Section 35076 would amend current regulation to reflect the proposed elimination of the project designer course and adoption of the sampling technician course related to application requirements and procedures for training provider accreditation, renewal, and course approval by the Department.

Sections 35081, 35082, 35089, and 35095 would amend current regulation to reflect the proposed elimination of the project designer discipline and adoption of the sampling technician discipline related to representation of certification status, application timeliness, certification eligibility requirements, and application requirements.

Section 36000 would amend current regulation to incorporate the proposed sampling technician discipline and to specify the activities that the proposed sampling technician discipline are permitted to conduct and to clarify that project monitors may conduct clearance inspections by cross reference to existing regulation that allows project monitors to conduct these inspections.

Section 36050 would adopt a standard for lead-safe work practices to set minimum safety standards for lead activities in order to prevent the generation of lead hazards and protect children in California from lead poisoning.

Section 36100 would amend current regulation to reflect the proposed elimination of the project designer discipline related to the preparation of an abatement plan.

AUTHORITY

Sections 100275, 105250, 105255, 105256, 124160, and 124165, Health and Safety Code.

REFERENCE

Sections 17920, 105251, 105252, 105253, 105254, 105255, 105256, 124160, and 124165, Health and Safety Code; Sections 1941, 3479, 3480, and 3481, Civil Code; Section 17274(b), Revenue and Taxation Code.

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on June 5, 2007, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-7714; or
3. By email to regulation@dhs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DPH-07-003" in the subject line to facilitate timely identification and review of the comment), or
4. By using the "Making Comments on DHS Regulations" link on the Department website at <http://www.applications.dhs.ca.gov/regulations/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Dan Scannell of the Childhood Lead Poisoning Prevention Branch at (510) 620-5689.

All other inquiries concerning the action described in this notice may be directed to Cathy Ruebusch of the Office of Regulations at (916) 440-7841, or to the designated backup contact person, Charles E. Smith, at (916) 440-7693.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH-07-003.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at <http://www.applications.dhs.ca.gov/regulations/> and then clicking on the "Select DHS regulations" button.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulation@dhs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: None.
- B. Fiscal Effect on State Government: None.
- C. Fiscal Effect on Federal Funding of State Programs: None.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant state-wide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would not affect small business because the requirements of the proposed regulations are not new, as they are already specified in federal regulations and local mandates and the industry is already in compliance with these requirements. These regulations are being proposed for adoption to bring the state requirements into agreement with federal and local mandates currently in effect.

The Department has determined that the regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Cathy Ruebusch, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7841 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

TITLE 18. STATE BOARD OF EQUALIZATION

Notice Is Hereby Given

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to promulgate amendments to Regulation 1521, *Construction Contractors*, regarding the classification of solar cells, solar panels, and solar modules as materials or fixtures, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on May 31, 2007. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by June 1, 2007.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Regulation 1521, *Construction Contractors*, is proposed to be amended to provide that photovoltaic cells, solar panels, and solar modules should be considered

materials when they function in the same manner as other materials such as roofing shingles, skylights, wall panels or windows, but that other photovoltaic cells, solar panels, and solar modules are accessory to a building and should be considered fixtures.

Cost To Local Agencies And School Districts

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

Effect On Business

Pursuant to Government Code section 11346.5(a)(7), the Board of Equalization makes an initial determination that the adoption of Proposed Regulation 1521 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

Cost Impact On Private Person Or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Effect On Housing Costs

No significant effect.

Federal Regulations

Proposed Regulation 1521 has no comparable federal regulations.

Authority

Section 7051 Revenue and Taxation Code.

Reference

Sections 6009, 6012, 6015 and 6016, Revenue and Taxation Code.

Contact

Questions regarding the substance of the proposed regulation should be directed to Ms. Lisa Andrews (916) 322-5989, at 450 N Street, Sacramento, CA 95814, e-mail Lisa.Andrews@boe.ca.gov or by mail at State Board of Equalization, Attn: Lisa Andrews,

MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail Diane.Olson@boe.ca.gov or Ms. Joann Richmond, Property Tax Appeals Analyst, telephone (916) 322-1931, fax (916) 324-3984, e-mail Joann.Richmond@boe.ca.gov or by mail at State Board of Equalization, Attn: Diane Olson or Joann Richmond, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

Alternatives Considered

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

Availability Of Initial Statement Of Reasons And Text Of Proposed Regulation

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

Availability Of Final Statement Of Reasons

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It also will be available for your inspection at 450 N Street, Sacramento, California.

Additional Comments

Following the hearing, the State Board of Equalization may in accordance with law adopt the proposed regulation if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider writ-

ten comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

TITLE 22. EMPLOYMENT TRAINING PANEL

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Employment Training Panel (Panel) proposes to amend Section 4401.5 and repeal Sections 4401, 4402, 4432 and 4441 in Title 22 of the California Code of Regulations. The proposed regulatory actions would remove unnecessary or outdated procedures and requirements. The Initial Statement of Reasons and Express Text of the proposed action are accessible through the *Pending Regulatory Actions* link on the Home Page of the ETP website (www.etp.ca.gov).

AUTHORITY AND REFERENCE

The Panel's rulemaking authority is set forth at Section 10205(m) of the Unemployment Insurance (UI) Code. The proposed repeals would affect the Panel's implementation of UI Code Sections 10200, 10201, 10205, 10206, 10207 and 10214.5.

INFORMATIVE DIGEST

Amend Section 4401.5, Employer Eligibility

Section 4401.5 provides that employers with a California Employer Account Number (CEAN) prefix of 699 or less are eligible for Panel funding. Employers with a CEAN prefix of 900–999 are ineligible. Federal agencies are also ineligible because they are not subject to the UI tax.

The Employment Development Department assigns the CEAN numbers. ETP uses them for administrative convenience only. Because they have no independent legal significance for eligibility, there is no need to identify them in a regulation.

Section 4401.5 provides for “incidental placements” of new-hire trainees of up to 20% of the overall trainee population, although these placements cannot be planned in advance. Incidental placements are approved from time-to-time as conditions warrant, so this portion of the provision is still necessary. The Panel adopted this provision's amendment to reflect ETP's current practice in which ETP anticipates placements at the time the Panel reviews a training proposal, case-by-case.

Repeal Section 4401, Evaluation Process

Section 4401 repeats and, in part, misstates other provisions of law.

Section 4401(a) essentially repeats Unemployment Insurance (UI) Code Section 10205(c) and makes three incorrect references: 1) a “private industry council” which is no longer in existence; 2) the Federal Job Training Partnership Act, which is re-titled as the Workforce Investment Act of 1998; and, 3) Unemployment Insurance Code Section 15021 (sic) which is not an eligibility standard. Section 4401(b) & (c) directs staff to expedite the review of proposals by employers that are moving to or expanding operations in California. This expedited process is now handled as a Critical Proposal under Section 4402.2. There is no need to state the same process in two regulations. As such, Section 4401 is unnecessary.

Repeal Section 4402, Application Process

Section 4402(a) & (c) require submission of an Application for Funding (Form ETP 001) and set a three-week time frame within which staff must mail this form upon request. Section 4402(b) lists 13 items of information that must be addressed in the Form ETP 001.

It is not necessary to set a three-week time frame because it is in the applicant's interest to timely submit, and the requirement for mailing is out-of-date because the Form ETP 001 is now submitted online.

It is not necessary to list the 13 items of information because they either reflect existing requirements, or are merely procedural. This is especially true where, as here, the requirements pertain to a program that is neither entitlement nor obligation. As such, Section 4402 is unnecessary.

Repeal Section 4432, Incompatibility

Section 4432 defines the term “incompatibility” to determine whether a person holds incompatible public offices. This definition is derived from a California Supreme Court ruling on the subject of holding dual public offices: *People ex rel. Chapman v. Rapsey* (1940) 16 Cal.2d 636.

The *Chapman* ruling is well-established and has been relied upon in a series of opinions published by the Office of Attorney General, as recently as 2005. In each instance, the outcome was to vacate the official's right to hold his or her incumbent office upon acceptance of a second, incompatible office. Also, *Chapman* quotes a portion of legal treatise in Section 469, Volume 2 of McQuillin on Municipal Corporations. The same quote appears almost verbatim in Section 4432. But the quote is out-of-context and potentially misleading as used in the regulation. As such, Section 4432 is unnecessary.

Repeal Section 4441, Retraining Certification

Section 4441 requires submission of a Retraining Certification (Form RC) for all retraining proposals, whether single employer or Multiple Employer Contract (MEC), but not for Special Employment Training. This regulation is largely based on an expanded defini-

tion of “eligible employer” in UI Code Section 10201 that took effect in 1993. However, those aspects of the definition were repealed in 2001, and ETP no longer uses Form RC.

ETP now uses other forms to capture eligibility information based on the definition in UI Code Section 10201.

It is not necessary to implement eligibility requirements in a regulation when they are set forth in statute, especially where, as here, the requirements pertain to a program that is consensual between the oversight agency and the private sector. As such, Section 4441 is unnecessary.

FISCAL DISCLOSURES

The Panel has made the following initial determinations regarding fiscal disclosures required by Section 11346.2 of the Government Code.

A. Fiscal Impact. The Panel has made an initial determination that the proposed actions do not impose costs or savings requiring reimbursement under Section 17500 *et seq.* of the Government Code. Furthermore, these actions do not impose non-discretionary costs or savings to any local agency; nor do they impact federal funding for the State.

The Panel has made an initial determination that the proposed actions do not impose costs or savings to any State agency pursuant to Section 11346.1(b) or 11346.5(a)(6) of the Government Code. Furthermore, there are no fiscal impact disclosures required by State Administrative Manual sections 6600–6670.

B. Cost Impacts. The Panel is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The same determination applies to housing costs. These actions simply clarify the Panel’s definition of Job Creation and thus, there would be no costs associated with these actions.

C. Adverse Impact on Business. The Panel has made an initial determination that the proposed actions do not have any significant, statewide adverse economic impact directly affecting business, including the ability to compete.

D. Effect on Small Business. The Panel has determined that the proposed actions will not affect small businesses unless they seek training funds. Since this action would clarify and simplify the Panel’s standards for reviewing and funding training proposals, this would be a positive effect.

E. Effect on Jobs and Business Expansion. The Panel has made an initial determination that the proposed actions would not create or eliminate jobs in California. Nor would they create new businesses or eliminate existing businesses in California. The Panel has made an

initial determination that these actions would not directly affect the expansion of businesses currently operating in California.

F. Imposed Mandate. The Panel has made an initial determination that the proposed actions do not impose a mandate on local agencies or school districts.

REASONABLE ALTERNATIVES

The Panel must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

WRITTEN COMMENT PERIOD

A 45-day written comment period has been established beginning on April 13, 2007 and ending at 5:00 p.m. on May 28, 2007. Any interested person, or his or her authorized representative, may present written comments on the proposed actions within that time period. Comments should be sent to:

Maureen Reilly
Employment Training Panel, Legal Unit
1100 “J” Street, Fourth Floor
Sacramento, CA 95814
Telephone: (916) 327–5252
E-mail: mreilly@etp.ca.gov
FAX: (916) 327–5268

Or

Spencer Kenner
Employment Training Panel
1100 J Street, 4th Floor
Sacramento, CA 95814
Telephone: (916) 327–5578
E-mail: skenner@etp.ca.gov
FAX: (916) 327–5268

PUBLIC HEARING

A public hearing will not be held unless one is requested by an interested person, or his or her authorized representative. The request must be submitted in writing to the address shown above no later than 5:00 p.m. on the fifteenth day before the written comment period ends. The request should identify the specific regulatory action for which the hearing is requested.

MODIFICATIONS

Modifications to the text of the proposed regulatory actions may be made after the public comment period. If so, they will be posted on the ETP Website at

www.etp.ca.gov. They will also be available upon request to the address shown above. Said modifications will be open to public comment for at least 15 days before their adoption, as noticed on the ETP Website. The modified text will also be mailed to persons who (1) submitted written comments during the written comment period; (2) submitted written or oral testimony at the public hearing (if one is held); and (3) specifically requested notification of any modified changes.

AVAILABILITY OF DOCUMENTS

The Panel has prepared an Initial Statement of Reasons for the proposed actions, and has compiled all information on which the actions were based. This statement, along with the express text of the proposed actions and the written information on which they were based, are available for inspection at the address shown above.

The Panel will prepare a Final Statement of Reasons at the conclusion of the public comment period. This final statement and the information on which it is based will also be available for inspection at the address shown above. This Notice of Proposed Rulemaking is posted on the ETP Website at www.etp.ca.gov. The Initial Statement of Reasons and the express text of the proposed actions are also posted on the ETP Website.

CONTACT PERSONS

Requests for copies of the express text of the proposed actions and the modified text (if any), and the Initial Statement of Reasons, should be directed to the address shown above. In addition, the "rulemaking file" of written information on which the proposed actions are based is available for inspection upon request.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice

For Publication April 13, 2007
CESA CONSISTENCY DETERMINATION FOR
Interstate 15 Truck Descending Lane
Post-mile 169.9 to 182.1
San Bernardino County

The California Department of Fish and Game (Department) received notice on March 29, 2007 that the California Department of Transportation (Caltrans) proposes to rely on consultations between federal agen-

cies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). The project consists of the construction of a 12 mile long northbound truck-descending lane and rehabilitation of the north and southbound roadbeds on Interstate 15 between post miles 169.9 and 182.1 in San Bernardino County, California.

The U.S. Fish and Wildlife Service, on March 27, 2007, issued to the Federal Highway Administration, a no jeopardy federal biological opinion (1-8-07-F-21) which considers the Federally and State threatened desert tortoise (*Gopherus agassizii*) and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, Caltrans is requesting a determination on whether the Federal Biological Opinion 1-8-07-F-21 is consistent with CESA. If the Department determines that the federal biological opinion is consistent with CESA, Caltrans will not be required to obtain an incidental take permit under CESA for the proposed project.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice

For Publication April 13, 2007
CESA CONSISTENCY DETERMINATION FOR
Replacement of Four Bridges on
State Route 169 Project
Humboldt County

The California Department of Fish and Game ("Department") received notice on May 17, 2005 that the California Department of Transportation ("Caltrans") proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of replacing the Cappell Creek, Mawah Creek, Rube Ranch Creek, and Martins Ferry School Creek bridges on State Route 169 in Humboldt County. The activities will include in-water work which will impact listed fish species and will necessitate removal of riparian vegetation.

The National Marine Fisheries Service, on November 9, 2005, issued to the Federal Highway Administration (FHWA), a no jeopardy federal biological opinion (151422SWR2005AR00605:FR) which considers the Federally and State threatened Southern Oregon/Northern California Coast (SONCC) Coho Salmon (*Oncorhynchus kisutch*) and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, Caltrans is requesting a determination on whether the federal biological opinion

151422SWR2005AR00605:FR is consistent with CESA. If the Department determines that the federal biological opinion is consistent with CESA, Caltrans will not be required to obtain an incidental take permit under CESA for the proposed project.

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

The Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency is making available on the OEHHA world-wide web site the final report "DEVELOPMENT OF HEALTH CRITERIA FOR SCHOOL SITE RISK ASSESSMENT PURSUANT TO HEALTH AND SAFETY CODE SECTION 901(g): PROPOSED CHILD-SPECIFIC BENCHMARK CHANGE IN BLOOD LEAD CONCENTRATION FOR SCHOOL SITE RISK ASSESSMENT".

Health and Safety Code Section 901(g) requires OEHHA to evaluate and publish, as appropriate, numerical health guidance values for those chemicals that could be encountered at school sites and may adversely impact the health of school children. This document underwent public review and comment periods following the requirements set forth in Health and Safety Code Section 57003 for receiving public input. In developing the final document, OEHHA has reviewed comments from an external peer review panel and other interested parties. A public workshop was held in the Cal/EPA headquarters Building on April 12, 2006. A second public review period was held from January 5, 2007 to February 16, 2007. The final report will be available April 16, 2007 on the OEHHA world-wide web site at OEHHA.CA.gov. If you would like to receive further information on this announcement or have questions, please contact our office at (916) 324-2829 or the address below. Written requests or comments should be addressed to:

Mr. Leon Surgeon
Integrated Risk Assessment Section
Office of Environmental Health Hazard Assessment
P.O. Box 4010
1001 I Street
Sacramento, California 95812-4010
FAX: (916) 322-9705

**OAL REGULATORY
DETERMINATION**

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATIONS**

**(Pursuant to Government Code Section 11340.5
and Title 1, section 270, of the
California Code of Regulations)**

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

**2007 OAL DETERMINATION No. 4
(OAL FILE # CTU 06-0928-01)**

**REQUESTED BY: COUNCIL ON AGING, SILICON
VALLEY, INC**

AGENCY: DEPARTMENT OF AGING

**CONCERNING: PROGRAM MEMO No. PM 04-22(P)
DEALING WITH "ONE-TIME-ONLY
FUNDS"**

**DETERMINATION ISSUED PURSUANT
TO GOVERNMENT CODE SECTION
11340.5.**

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule is a "regulation" as defined in Government Code section 11342.600, and must, therefore be adopted pursuant to the Administrative Procedure Act (APA). OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

ISSUE

On September 28, 2006, the Council on Aging, Silicon Valley, Inc. (Petitioner) submitted a petition to OAL alleging that the California Department of Aging (CDA) issued, used, enforced, or attempted to enforce an underground regulation¹ in violation of Government Code section 11340.5.² The alleged underground regulation is a paragraph in CDA's Program Memo NO. PM 04-22(P) (Memo). Section G of the Memo limits the use of federal One-Time Only funds to one-time-only purposes and prohibits the use of the funds to increase baseline needs. The funds can be used only for the following purposes:

- (a) The purchase of equipment which enhances the delivery of services to the eligible services population.
- (b) Home and community-based projects which assist families and/or caregivers to maintain the eligible services population in a home environment, as approved by the Department.
- (c) Innovative pilot projects as approved by the Department.

DETERMINATION AND CONCLUSION

In issuing a determination, OAL renders an opinion as to whether a challenged rule is a "regulation" as defined in section 11342.600, which should have been, but was not, adopted pursuant to the APA. Section 11342.600 defines "regulation" to mean "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to, implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." In *Tidewater Marine Western Inc. v. Victoria Bradshaw*, 14 Cal.4th 557, 571 (1996), the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies

generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, § 11342, subd. (g)).

For an agency rule to "apply generally" it need not apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind or order³. Section G of the Memo applies generally to all members of an open class, e.g., all Area Agencies on Aging. Furthermore, section G of the Memo implements 42 U.S.C. 3025(a)(2)(C), 42 U.S.C. 3028, 42 U.S.C. 3030a, 42 U.S.C. 3030s-1, 42 U.S.C. 3058a, and Welfare and Institutions Code Sections 9100, 9112 and 9719.5. Thus, section G of the Memo meets the definition of "regulation." OAL also finds that section G of the Memo does not fall within any express statutory exemption from the rulemaking requirements of the APA. Therefore, section G of the Memo is an underground regulation.

On November 30, 2006, CDA agreed that the challenged provision in the Memo "violates the California Administrative Procedure Act (APA)."⁴ CDA has published a Notice of Proposed Action and is following the procedures in the APA to adopt this provision into regulation. Although the final regulation package has not yet been submitted to OAL for review, CDA has, through informal telephone calls, kept OAL abreast of the status of the rulemaking process and it is progressing according to schedule.

April 2, 2007

/s/
Linda C. Brown
Deputy Director

Kathleen Eddy
Senior Counsel

Peggy J. Gibson
Staff Counsel

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento CA 95814
(916) 323-6815

¹ An underground regulation is defined in Title 1, California Code of Regulations, section 250:

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

² Unless specified otherwise code references are to the California Government Code.

³ *Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 630, 167 Cal.Rptr. 552, 556; see *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323-324 (a standard of general application applies to all members of any open class.).

⁴ Letter to Kathleen Eddy, Senior Staff Counsel with OAL, from Chisorom U. Okwuosa, Senior Staff Counsel with CDA, dated November 30, 2006.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

BOARD OF EQUALIZATION Florists

This action defines the term “florist” and updates the regulation that specifies the application of sales tax to sales of flowers and delivery services by florists and retailers of flowers.

Title 18
California Code of Regulations
AMEND: 1571
Filed 03/30/07
Effective 04/29/07
Agency Contact: Diane G. Olson (916) 322-9569

BUREAU OF NATUROPATHIC MEDICINE Bureau of Naturopathic Medicine — Address Change

This amendment of regulation section 4202 of Title 16 is to indicate a change of address.

Title 16
California Code of Regulations
AMEND: 4202
Filed 04/03/07
Effective 04/03/07
Agency Contact: Linda Brown (916) 574-7998

CALIFORNIA ENERGY COMMISSION Revisions to Siting Regulations

This action updates the requirements for applications to the Commission for power plant site certification and related procedures.

Title 20
California Code of Regulations
AMEND: 1002, 1201, 1207, 1208, 1209, 1209.5, 1216, 1217, 1702, 1708, 1709.7, 1710, 1716, 1717, 1720, 1720.3, 1720.4, 1721, 1744, 1747, REPEAL: 1219, 1720.5, 1720.6
Filed 03/28/07
Effective 03/28/07
Agency Contact: James Reede (916) 653-1245

CALIFORNIA STATE UNIVERSITY Smoking on Campus

This change without regulatory effect adds Government Code section 7596 et seq. as a Reference citation to section 42356 of title 5 of the California Code of Regulations. This filing is exempt from the Administrative Procedure Act pursuant to Education Code section 89030.1.

Title 5
California Code of Regulations
AMEND: 42356
Filed 03/29/07
Effective 03/29/07
Agency Contact:
Deanna L. Thompson (562) 951-4495

DEPARTMENT OF FOOD AND AGRICULTURE Bovine Brucellosis; Swine/ Quarantine

This action updates the vaccination age of dairy heifers for bovine brucellosis, requires an Interstate Live-stock Entry Permit for importation of swine for immediate slaughter when the State Veterinarian determines that a threat exists for the importation of disease, and defines the phrase “may carry” contained in Food and Agriculture Code section 9562.

Title 3
California Code of Regulations
AMEND: 752, 796.6, 1301
Filed 04/02/07
Effective 05/02/07
Agency Contact: Thami Rodgers (916) 698-3276

DEPARTMENT OF FOOD AND AGRICULTURE Oriental Fruit Fly Eradication Area

This Certificate of Compliance makes permanent the emergency language (OAL file no. 06-1107-01E) adding Riverside County to the list of counties already proclaimed to be eradication areas with respect to the Oriental fruit fly, “*Bactrocera dorsalis*.”

Title 3
California Code of Regulations
AMEND: 3591.2 (a)
Filed 03/28/07
Effective 03/28/07
Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE Light Brown Apple Moth Eradication Area

This emergency regulatory action designates the entire counties of Marin and San Francisco as additional “eradication areas” with respect to the light brown apple moth (*Epiphyas postvittana*). Contra Costa and Alameda counties were previously designated. This regula-

tory section identifies the pest, its hosts, including grapes), possible carriers of the pest (i.e. farm equipment and greenwaste), as well as the means and methods of eradication of the pest.

Title 3
California Code of Regulations
AMEND: 3591.20(a), 3591.20(b)
Filed 04/03/07
Effective 04/03/07
Agency Contact: Stephen Brown (916) 654-1017

FISH AND GAME COMMISSION

Wildlife Rehabilitation

Fish & Game Commission proposes amendment of 14 CCR section 679 to establish an application process for the issuance of Department of Fish & Game permits for operating a wildlife rehabilitation facility in California. Amended Section 679 establishes minimum qualification criteria for applicants and standards that the facility and animal containment or caging must meet, facility inspections, application forms and processing fees, and requires a sponsoring veterinarian and ongoing facility staff training. Permits will be issued in the form of a memorandum of understanding between Department of Fish and Game and the permittee, renewable every three years.

Title 14
California Code of Regulations
AMEND: 679
Filed 04/02/07
Effective 04/02/07
Agency Contact: Jon Snellstrom (916) 653-4899

HEARING AID DISPENSERS BUREAU

This amendment of regulation section 1399.101 is to indicate a change of address.

Title 16
California Code of Regulations
AMEND: 1399.101
Filed 04/03/07
Effective 04/03/07
Agency Contact: Linda Brown (916) 574-7998

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Section 100 Change to the California Code of Regulations, Title 8, General Industry Safety Orders, Section 3664, Operating Rules

The California Occupational Safety and Health Standards Board is amending a cross-reference in section 3664(a), title 8, California Code of Regulations in order to conform that particular cross-reference citation to changes that were made in prior Office of Administra-

tive Law File No. 06-0922-02S. Section 3650(s) is being changed to section 3650(t) in order to comply with renumbering changes.

Title 8
California Code of Regulations
AMEND: 3664(a)
Filed 03/29/07
Effective 04/28/07
Agency Contact: Marley Hart (916) 274-5721

OFFICE OF THE STATE FIRE MARSHAL

Automatic Extinguishing Systems

This regulatory action is to amend one section in Title 19 to revise the format for self-adhesive tags for automatic fire extinguishing systems. It follows on the heels of a large rulemaking by OSFM in which they had provided a graphic of the tag. The tag can be hanging or adhesive. The previous rulemaking had mistakenly indicated that there were two sides to the tag and the user was required to provide information on both sides. The information on the "adhesive" side is being deleted since it is no longer necessary and would be unreadable once adhered to a surface.

Title 19
California Code of Regulations
AMEND: 906.2
Filed 03/28/07
Effective 04/01/07
Agency Contact: Diane Arend (916) 324-9592

STEPHEN P. TEALE DATA CENTER

Conflict of Interest Code for the Department of Technology Services

This is a Conflict of Interest Code filing that has been approved by the Fair Political Practices Commission and is being submitted for filing with the Secretary of State and printing only.

Title 2
California Code of Regulations
AMEND: 28010 REPEAL: 36000
Filed 04/04/07
Effective 05/04/07
Agency Contact: Leanne Maucieri (916) 464-0324

CCR CHANGES FILED WITH THE SECRETARY OF STATE WITHIN NOVEMBER 01, 2006 TO APRIL 04, 2007

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted

by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

04/04/07 AMEND: 28010 REPEAL: 36000
 03/27/07 AMEND: 59560
 03/20/07 ADOPT: 18746.3
 03/15/07 AMEND: div. 8, ch. 102, section 59100
 03/14/07 AMEND: div. 8, ch. 73, section 56200
 03/01/07 AMEND: 21922
 02/28/07 AMEND: 714
 02/16/07 AMEND: 1859.2, 1859.76, 1859.83, 1859.163.1, 1859.167, 1859.202, 1866
 02/02/07 AMEND: 2561, 2563, 2564, 2565, 2566, 2567
 01/26/07 ADOPT: 599.550, 599.552, 599.553, 599.554 AMEND: 599.500
 01/19/07 ADOPT: 18531.62, 18531.63, 18531.64 AMEND: 18544
 01/11/07 AMEND: 1894.4, 1896.12
 01/09/07 ADOPT: 18530.3
 01/09/07 ADOPT: 18534
 01/09/07 AMEND: 18707.1
 01/08/07 ADOPT: 1859.106.1 AMEND: 1859.106
 12/22/06 AMEND: 21906
 12/18/06 AMEND: 18312, 18316.5, 18326, 18401, 18521, 18537.1, 18704.5, 18705.5, 18730, 18746.2
 12/18/06 AMEND: 18545
 12/18/06 ADOPT: 18421.3
 12/18/06 AMEND: 1859.2, 1859.70.1, 1859.71.3, 1859.78.5
 12/18/06 AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943
 12/14/06 ADOPT: 18707.10
 12/13/06 ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.37, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.75, 20108.80
 11/06/06 AMEND: 18216, 18421.1
 11/03/06 AMEND: 1859.73.2

Title 3

04/03/07 AMEND: 3591.20(a), 3591.20(b)
 04/02/07 AMEND: 752, 796.6, 1301
 03/28/07 AMEND: 3591.2 (a)
 03/27/07 ADOPT: 1446.9, 1454.16
 03/21/07 ADOPT: 3591.20
 03/15/07 ADOPT: 1371, 1371.1, 1371.2
 03/07/07 AMEND: 3423(b)

03/06/07 AMEND: 3700(c)
 02/15/07 ADOPT: 499.5, 513, 513.5 AMEND: 498, 499, 500, 501, 502, 504, 505, 509, 510, 511, 512, 512.1, 512.2, 514, 515, 516, 517, 525, 551, 552, 553, 554, 604.1 REPEAL: 499.5, 503, 506, 508, 512.3, 527, 536, 537, 538, 539, 540, 541, 543, 544, 546, 547, 550
 02/14/07 AMEND: 3700(c)
 02/08/07 AMEND: 3433(b)
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	1710, 1716, 1717, 1720, 1720.3, 1720.4,	69102, 69103, 69104, 69106

	(renumbered to 69107), 69107	01/09/07	ADOPT: 3908	
	(renumbered to 69108)	01/05/07	ADOPT: 499.4.1.1, 499.4.1.2, 499.4.2, 499.6.3	AMEND: 499.1, 499.2, 499.3, 499.4, 499.4.1, 499.5, 499.6, 499.6.1, 499.7, 499.8, REPEAL: 499.6.2
11/21/06	ADOPT: 97266 AMEND: 90417, 97210, 97227, 97240, 97241, 97244, 97246, 97250, 97260, 97261, 97264			
Title 22, MPP				
02/23/07	ADOPT: 86500, 86501, 86505, 86505.1, 86506, 86507, 86508, 86509, 86510, 86511, 86512, 86517, 86518, 86519, 86519.1, 86519.2, 86520, 86521, 86522, 86523, 86524, 86526, 86527, 86528, 86529, 86529, 86531, 86531.1, 86531.2, 86534, 86535, 86536, 86540, 86542, 86544, 86545, 86546, 86552, 86553, 86554, 86555, 86555.1, 86558, 86559, 86561, 86562, 86563, 86564, 86565, 86565.2, 86565.5, 86566, 86568.1, 86568.2, 86568.4, 86570, 86572, 86572.1, 86572.2, 86574, 86575, 86576, 86577, 86578, 86578.1, 86579, 86580, 86586, 86587, 86587.1, 86587.2, 86588, MPP 11-400c, 11-402, 45-101(c), 45-202.5, 45-203.4, 45-301.1	01/04/07	ADOPT: 3989.4	
		12/22/06	AMEND: 3912	
		11/27/06	ADOPT: 3929.2	
		11/20/06	ADOPT: 3929.1	
Title 25				
		12/26/06	ADOPT: 1433.1	AMEND: 1002, 1016, 1105, 1106, 1110, 1134, 1216, 1254, 1317, 1330, 1338, 1338.1, 1428, 1433, 1498, 1504, 2002, 2016, 2105, 2106, 2110, 2118, 2134, 2216, 2254, 2317, 2330, 2428, 2498, 2504
		11/27/06	ADOPT: 8460, 8461, 8462, 8463, 8464, 8465, 8466, 8467	AMEND: 8431
		11/08/06	AMEND: 16	
Title 28				
		01/24/07	ADOPT: 1330.67.04	REPEAL: 1300.67.8
Title MPP				
		02/05/07	AMEND: 30-757, 30-761	
		01/24/07	ADOPT: 22-901	AMEND: 22-001, 22-002, 22-003, 22-004, 22-009, 22-045, 22-049, 22-050, 22-053, 22-054, 22-059, 22-061, 22-063, 22-064, 22-065, 22-069, 22-071, 22-072, 22-073, 22-077, 22-078, 22-085
			REPEAL: 22-074, 22-075, 22-076	
Title 23				
03/23/07	ADOPT: 3989.6			
03/20/07	AMEND: 2913			
02/20/07	ADOPT: 3939.24			
02/20/07	AMEND: 3671, 3711, 3712, 3713, 3719.18			
02/06/07	ADOPT: 3939.23			
01/29/07	AMEND: 3833.1			
01/18/07	ADOPT: 3917			